

SECOND REGULAR SESSION

HOUSE BILL NO. 1723

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BOUCHER AND KREIDER (Co-sponsors).

Read 1st time January 30, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3716L.01I

AN ACT

To amend chapter 339, RSMo, by adding thereto thirteen new sections relating to licensing home inspectors, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 339, RSMo, is amended by adding thereto thirteen new sections, to
2 be known as sections 339.900, 339.903, 339.906, 339.909, 339.912, 339.915, 339.918, 339.921,
3 339.924, 339.927, 339.930, 339.933, and 339.936, to read as follows:

339.900. 1. As used in sections 339.900 to 339.936, the following terms mean:

2 **(1) "Commission", the Missouri home inspectors commission;**

3 **(2) "Home inspector", any person or entity that examines real estate, residential**
4 **or business, to determine the overall condition of the real estate and to determine the**
5 **presence of any defects or conditions that affect the value of the real estate.**

6 **2. A person or entity who meets the definition of home inspector as provided in**
7 **subsection 1 of this section is exempt from the provisions of sections 339.900 to 339.936 if**
8 **such person is:**

9 **(1) A person or entity doing business under the laws of this state or the United**
10 **States as a bank, trust company, savings and loan association, credit union, commercial or**
11 **consumer finance company, industrial loan company, insurance company or title insurance**
12 **company, or title insurance agency;**

13 **(2) An attorney-at-law;**

14 **(3) A person or entity licensed pursuant to this chapter rendering services in the**
15 **performance of his or her duties as a real estate broker or salesperson;**

16 **(4) A mortgage loan company that is subject to licensing, supervision, or auditing**
17 **by the Federal National Mortgage Association, the Federal Home Loan Mortgage**

18 Corporation, the United States Veterans' Administration, the Government National
19 Mortgage Association, the United States Department of Housing and Urban Development,
20 or a successor of any of such agencies or entities, as an approved seller or servicer; or

21 (5) The United States, the state of Missouri or any state, any political subdivision
22 of this state, or any agency, division, or corporate instrumentality thereof.

339.903. 1. No person shall act as a home inspector, or directly or indirectly engage
2 or assume to engage in the business of home inspection, or advertise or hold himself or
3 herself out as engaging in or conducting such business without first obtaining a license or
4 certificate issued by the Missouri home inspectors commission as provided in sections
5 339.900 to 339.936.

6 2. No license or certificate shall be issued pursuant to sections 339.900 to 339.936
7 to a partnership, association, corporation, firm, or group; except that, nothing in this
8 section shall preclude a state-licensed or state-certified home inspector from rendering
9 inspections for or on behalf of a partnership, association, corporation, firm, or group
10 provided the inspection report is prepared by or under the immediate personal direction
11 of the state-licensed or state-certified home inspector and is reviewed and signed by such
12 state-licensed or state-certified home inspector.

13 3. Any person who is not state licensed or state certified pursuant to sections
14 339.900 to 339.936 may assist a state-licensed or state-certified home inspector in the
15 performance of an inspection provided that the person is personally supervised by a
16 state-licensed or state-certified inspector and any inspection report rendered in connection
17 with the inspection is reviewed and signed by the state-licensed or state-certified home
18 inspector.

19 4. The provisions of sections 339.900 to 339.936 shall not be construed to require
20 a license or certificate for:

21 (1) Any person, partnership, association, or corporation who as owner performs
22 inspections of property owned by such person, partnership, association, or corporation;

23 (2) Any employee of a local, state, or federal agency who performs inspection
24 services within the scope of his or her employment; except that, such exemption shall not
25 apply where any local, state, or federal agency requires an employee to be registered,
26 licensed, or certified to perform inspection services;

27 (3) Any employee of a federal or state-regulated lending agency or institution;

28 (4) Any agent of a federal or state-regulated lending agency or institution in a
29 county of the third or fourth classification.

339.906. 1. There is hereby created within the division of professional registration
2 of the department of economic development the "Missouri Home Inspectors Commission",

3 which shall consist of seven members appointed by the governor with the advice and
4 consent of the senate, six of whom shall be home inspector members and one who shall be
5 a public member. Each member shall be a resident of this state and a registered voter for
6 a period of one year prior to the person's appointment. The public member shall have
7 never been engaged in the businesses of real estate appraisal, real estate sales, or making
8 loans secured by real estate. The governor shall designate one of the appraiser appointees
9 to be chairperson.

10 2. The home inspector members appointed by the governor shall have home
11 inspection experience in the state of Missouri for not less than five years immediately
12 preceding their appointment, and shall be designated members in good standing of
13 nationally recognized home inspector organizations that, as of June 1, 2002, required in
14 order to become a designated member, inspection experience, education and testing, and
15 recertification that is at least equal to that required for certification or licensure pursuant
16 to sections 339.500 to 339.936. Successor home inspector members of the commission shall
17 be appointed from the registry of state-certified home inspectors and state-licensed home
18 inspectors. The governor shall not exclude a state-certified home inspector or a
19 state-licensed home inspector from appointment as a successor inspector member of the
20 commission by virtue of membership or lack of membership of the state-certified home
21 inspector or state-licensed home inspector in any particular home inspector organization.

22 3. Of the initial members appointed, two members shall be appointed for one-year
23 terms, two members for two-year terms, and three members for three-year terms, provided
24 that the initial public member shall be appointed for a three-year term. All successor
25 members shall be appointed for three-year terms. All members shall serve until their
26 successors have been appointed and qualified. Vacancies occurring in the membership of
27 the commission for any reason shall be filled by appointment by the governor for the
28 unexpired term. Upon expiration of their terms, members of the commission shall continue
29 to hold office until the appointment and qualification of their successors. No more than
30 four members of the commission shall be members of the same political party. No person
31 shall be appointed for more than two consecutive terms. The governor may remove a
32 member for cause. The executive director of the commission shall be employed by the
33 division of professional registration, subject to approval and confirmation by the
34 commission.

35 4. The commission shall meet at least once each calendar quarter to conduct its
36 business. The location in Missouri of future meetings shall be decided by a vote of the
37 members present at the current meeting. The executive director shall give written notice
38 by certified mail to each member of the time and place of each meeting of the commission

39 at least ten days before the scheduled date of the meeting, and notice of any special meeting
40 shall state the specific matters to be considered in the special meeting which is not a regular
41 quarterly meeting. A quorum of the commission shall consist of four members.

42 5. Each member of the commission shall be entitled to a per diem allowance of fifty
43 dollars for each meeting of the commission at which the member is present and shall be
44 entitled to reimbursement of the member's actual and necessary expenses incurred in the
45 discharge of the member's official duties. Each member of the commission shall be entitled
46 to reimbursement of travel expenses necessarily incurred in attending meetings of the
47 commission.

339.909. The commission shall have the following powers and duties:

2 (1) To establish educational programs and research projects related to the
3 inspection of real estate;

4 (2) To establish administrative procedures for processing applications and issuing
5 certificates of state-certified home inspectors and licenses of state-licensed home inspectors
6 and for conducting disciplinary proceedings pursuant to the provisions of sections 339.900
7 to 339.936. The commission shall have authority to determine who meets the criteria for
8 certification and licensure, and shall have authority to renew, censure, suspend, or revoke
9 certifications and licenses;

10 (3) To further define by regulation the type of educational experience, appraisal
11 experience, and equivalent experience that will meet the statutory requirements of sections
12 339.900 to 339.936;

13 (4) To further define by regulation the continuing education requirements for the
14 renewal of certification and licensure that will meet the statutory requirements of sections
15 339.900 to 339.936;

16 (5) To adopt standards for the development and communication of home inspectors
17 and to adopt regulations explaining and interpreting the standards;

18 (6) To establish an examination for state-certified home inspectors and for
19 state-licensed home inspectors, to provide or procure appropriate examination questions
20 and answers, and to establish procedures for grading examinations;

21 (7) To maintain a registry of the names and addresses of state-certified home
22 inspectors and state-licensed home inspectors; and

23 (8) To perform such other functions and duties as may be necessary to carry out
24 the provisions of sections 339.900 to 339.936.

339.912. 1. Any person desiring to obtain licensure as a state-licensed home
2 inspector or certification as a certified home inspector shall make written application to
3 the commission on such forms as are prescribed by the commission setting forth the

4 applicant's qualifications for licensure or certification and present to the commission
5 satisfactory proof that the person is of good moral character and bears a good reputation
6 for honesty, integrity, and fair dealing.

7 2. Each applicant for licensure as a state-licensed home inspector or a state-certified
8 home inspector must demonstrate the knowledge and competence necessary to perform
9 inspections of residential and business real estate as the commission may prescribe by rule.
10 The commission shall prescribe by rule procedures for obtaining and maintaining
11 approved courses of instruction. The commission shall prescribe the hours of training in
12 home inspection practices and the minimum level of experience acceptable for licensure or
13 certification.

339.915. 1. Applications for examination, original certification and licensure, and
2 renewal certification and licensure shall be made in writing to the commission on forms
3 provided by the commission. The application shall specify whether the application is made
4 for certification or licensure.

5 2. Appropriate fees shall accompany all applications for examination, original
6 certification or licensure, and renewal certification or licensure; provided that such fees
7 shall be in amounts set by the commission to offset the cost and expense of administering
8 sections 339.900 to 339.936. All fees collected pursuant to this subsection shall be collected
9 by the commission and deposited with the state treasurer into a fund which is hereby
10 created in the state treasury to be known as the "Missouri Home Inspectors Fund".

11 3. At the time of filing an application for certification or licensure, each applicant
12 shall sign a pledge to comply with the standards set forth in sections 339.900 to 339.936 and
13 state that the applicant understands the types of misconduct for which disciplinary
14 proceedings may be initiated against a state-certified home inspector or a state-licensed
15 home inspector.

339.918. 1. An original certification as a state-certified home inspector may be
2 issued to any person who meets the qualification requirements for certification and who
3 has achieved a passing grade on a written examination that is consistent with and
4 equivalent to the uniform state certification examination issued or endorsed by the board
5 and the commission.

6 2. An original license as a state-licensed home inspector may be issued to any
7 person who meets the qualification requirements for licensure and who has achieved a
8 passing grade on a written examination that is consistent with and equivalent to the
9 uniform state licensure examination issued or endorsed by the board and the commission.

10 3. If an applicant is not certified or licensed within three years after passing an
11 examination given pursuant to the provisions of this section, the applicant shall be required

12 to retake the examination prior to certification or licensure.

13 **4. An applicant who fails an examination taken pursuant to this section may apply**
14 **for reexamination by submitting an application with the appropriate examination fee**
15 **within ninety days after the date the examination was last taken and failed.**

339.921. 1. Any person who files with the commission an application for state
2 **licensure or certification as a home inspector shall be required to pass an examination to**
3 **demonstrate his or her competence. The commission shall also make such investigation as**
4 **is required to verify such qualifications. If the results of the investigation are satisfactory**
5 **to the commission and the applicant is otherwise qualified, the commission shall issue to**
6 **the applicant a license or certificate authorizing the applicant to act as a state-licensed**
7 **home inspector or a state-certified home inspector in Missouri. If the results of the**
8 **investigation are unsatisfactory, action on the application may be deferred pending a**
9 **hearing before the commission.**

10 **2. The commission shall promulgate and adopt rules which prescribe and define**
11 **the subjects related to home inspection and the experience in real estate appraisal that will**
12 **satisfy the qualification requirements for licensure or certification. The commission may**
13 **approve courses of instruction in an accredited college or university relating to the**
14 **inspection of homes and such other areas deemed relevant by the commission. The**
15 **commission may also approve similar courses of instruction offered by recognized**
16 **professional home inspection organizations and real estate organizations and agencies of**
17 **the state and federal government, and other qualified providers which may be approved**
18 **by the commission.**

19 **3. Each applicant for certification or licensure shall furnish under oath a detailed**
20 **statement of the home inspection assignments or file memoranda for each year in which**
21 **home inspection experience is claimed by the applicant. Upon request, the applicant shall**
22 **furnish to the commission a sample of inspection reports or file memoranda which the**
23 **applicant has prepared in the course of his or her inspection practice.**

339.924. 1. The term of an original certificate or license issued pursuant to sections
2 **339.900 to 339.936 shall be for a period set by the commission. All certificates and licenses**
3 **shall be subject to renewal on the same date. The expiration date of the certificate or**
4 **license shall appear on the certificate or license and no other notice of its expiration need**
5 **be given to its holder.**

6 **2. The commission shall require every state-certified or state-licensed home**
7 **inspector to provide satisfactory evidence of the completion of the required continuing**
8 **education hours as promulgated by the commission. The commission may waive the**
9 **requirements of continuing education for retired or disabled licensed or certified inspectors**

10 or for other good cause.

339.927. 1. As a prerequisite of renewal of certification or licensure, a
2 state-certified home inspector or state-licensed home inspector shall present evidence
3 satisfactory to the commission of having met the continuing education requirements as
4 provided in this section. The basic continuing education requirements for renewal of
5 certification or licensure shall be the completion by the state-certified home inspector or
6 state-licensed home inspector of continuing education during the immediately preceding
7 term of certification or licensure, as prescribed and approved by the commission.

8 2. In lieu of meeting the requirements of subsection 1 of this section, an applicant
9 for renewal of certification or licensure may satisfy all or part of the requirements of this
10 section by presenting evidence of the following:

11 (1) Completion of courses of study determined by the commission to be the
12 equivalent, for continuing education purposes, of courses approved by the commission
13 pursuant to subsection 1 of this section;

14 (2) Participation, other than as a student, in educational processes and programs
15 in home inspection practices or techniques, including but not limited to teaching, program
16 development, and preparation of textbooks, monographs, articles, and other instructional
17 materials, all to be approved by the commission.

18 3. The commission shall adopt rules for implementation of the provisions of this
19 section to assure that state-certified home inspectors renewing their certifications and
20 state-licensed home inspectors renewing their licenses have current knowledge of home
21 inspection practices and techniques which will provide a high degree of service and
22 protection to those members of the public with whom they deal in a professional
23 relationship under authority of the certification or licensure. Such regulations shall
24 prescribe the following:

25 (1) Policies and procedures for obtaining commission approval of courses of
26 instruction pursuant to this section;

27 (2) Standards, policies, and procedures to be applied by the commission in
28 evaluating an applicant's claims of equivalency pursuant to this section;

29 (3) Standards, monitoring methods, and systems for recording attendance to be
30 employed by course sponsors as a prerequisite to commission approval of courses for
31 credit.

32 4. In adopting rules pursuant to this section, the commission shall give favorable
33 consideration to courses of instruction, seminars, and other home inspection education
34 courses or programs previously or hereafter developed by or under the auspices of
35 professional home inspection organizations and utilized by those associations for purposes

36 of designation, certification, licensure, recertification, or relicensure of the members of the
37 association.

38 **5. No amendment or repeal of a rule adopted by the commission pursuant to this**
39 **section shall operate to deprive a state-certified home inspector or state-licensed home**
40 **inspector of credit toward renewal of certification or licensure for any course of instruction**
41 **completed prior to the amendment or repeal of the rule if the course would have qualified**
42 **for continuing education credit under the rule as it existed prior to the repeal or**
43 **amendment.**

339.930. 1. The commission may refuse to issue or renew any certificate or license
2 **issued pursuant to sections 339.900 to 339.936 for one or any combination of causes stated**
3 **in subsection 2 of this section. The commission shall notify the applicant in writing of the**
4 **reasons for the refusal and shall advise the applicant of the right to file a complaint with**
5 **the administrative hearing commission as provided by chapter 621, RSMo.**

6 **2. The commission may cause a complaint to be filed with the administrative**
7 **hearing commission as provided by chapter 621, RSMo, against any state-certified home**
8 **inspector, state-licensed home inspector, or any person who has failed to renew or has**
9 **surrendered his or her certificate or license for any one or any combination of the**
10 **following causes:**

11 **(1) Procuring or attempting to procure a certificate or license pursuant to section**
12 **339.912 by knowingly making a false statement, submitting false information, refusing to**
13 **provide complete information in response to a question in an application for certification**
14 **or licensure, or through any form of fraud or misrepresentation;**

15 **(2) Failing to meet the minimum qualifications for certification or licensure or**
16 **renewal established by sections 339.900 to 339.936;**

17 **(3) Paying money or other valuable consideration, other than as provided for by**
18 **section 339.912, to any member or employee of the commission to procure a certificate or**
19 **license pursuant to sections 339.900 to 339.936;**

20 **(4) The person has been finally adjudicated and found guilty, or entered a plea of**
21 **guilty or nolo contendere, in a criminal prosecution under the laws of any state or the**
22 **United States for any offense reasonably related to the qualifications, functions, or duties**
23 **of any profession licensed or regulated pursuant to sections 339.900 to 339.936 for any**
24 **offense of which an essential element is fraud, dishonesty, or an act of violence, or for any**
25 **offense involving moral turpitude, regardless of the imposition of sentence;**

26 **(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or**
27 **misrepresentation in the performance of the functions or duties of any profession licensed**
28 **or regulated by sections 339.900 to 339.936;**

29 (6) Violation of any of the standards for the development or communication of
30 home inspections as provided in or pursuant to sections 339.900 to 339.936;

31 (7) Failure or refusal without good cause to exercise reasonable diligence in
32 developing an inspection, preparing an inspection report, or communicating an inspection;

33 (8) Negligence or incompetence in developing an inspection, in preparing an
34 inspection report, or in communicating an inspection;

35 (9) Violating, assisting, or enabling any person to willfully disregard any of the
36 provisions of sections 339.900 to 339.936 or the rules of the commission for the
37 administration and enforcement of the provisions of sections 339.900 to 339.936;

38 (10) Accepting an inspection assignment when the employment itself is contingent
39 upon the inspector's reporting a predetermined analysis or opinion or where the fee to be
40 paid for the performance of the inspection assignment is contingent upon the opinion,
41 conclusion, or valuation reached or upon the consequences resulting from the inspection
42 assignment;

43 (11) Violating the confidential nature of governmental records to which the person
44 gained access through employment or engagement to perform an inspection assignment or
45 specialized inspection services for a governmental agency;

46 (12) Violating any term or condition of a certificate or license issued by the
47 commission pursuant to the authority of sections 339.900 to 339.936;

48 (13) Violation of any professional trust or confidence;

49 (14) Obtaining or attempting to obtain any fee, charge, tuition, or other
50 compensation by fraud, deception, or misrepresentation;

51 (15) Assisting or enabling any person to practice or offer to practice any profession
52 licensed or regulated by sections 339.900 to 339.936 who is not licensed or certified and
53 currently eligible to practice pursuant to sections 339.900 to 339.936;

54 (16) Use of any advertisement or solicitation which is false, misleading, or deceptive
55 to the general public or persons to whom the advertisement or solicitation is primarily
56 directed;

57 (17) Disciplinary action against the holder of a license, certificate, or other right to
58 practice any profession regulated pursuant to sections 339.900 to 339.936, imposed by
59 another state, territory, federal agency, or country upon grounds for which revocation or
60 suspension is authorized in this state.

61 3. After the filing of such complaint, the proceedings shall be conducted in
62 accordance with the provisions of chapter 621, RSMo. Upon a finding by the
63 administrative hearing commission that the grounds provided in subsection 2 of this
64 section for disciplinary action are met, the commission may, singly or in combination,

65 publicly censure or place the person named in the complaint on probation on such terms
66 and conditions as the commission deems appropriate for a period not to exceed five years,
67 or may suspend for a period not to exceed three years or revoke the certificate or license.
68 The holder of a certificate or license revoked pursuant to this section shall not obtain
69 certification as a state-certified home inspector or licensure as a state-licensed home
70 inspector for at least five years after the date of revocation.

71 **4. Applicants for recertification, relicensure, or reinstatement shall be required to**
72 **successfully complete the examination for original certification or licensure required by**
73 **section 339.921 as a condition to reinstatement of certification or licensure, or**
74 **recertification or relicensure subsequent to revocation.**

339.933. State-certified home inspectors and state-licensed home inspectors shall
2 **retain originals or true copies of contracts engaging an inspector's services for inspector**
3 **assignments, specialized inspection services, inspection reports, and supporting data**
4 **assembled and formulated in preparing inspection reports for five years. The period for**
5 **retention of the records applicable to each engagement of the services of the state-certified**
6 **home inspector or state-licensed home inspector shall run from the date of the submission**
7 **of the inspection report to the client. Such records shall be made available by the state-**
8 **certified home inspector or state-licensed home inspector for inspection and copying by the**
9 **commission on reasonable notice to the state-certified home inspector or state-licensed**
10 **home inspector. When litigation is contemplated at any time, reports and records shall be**
11 **retained for three years after the trial date.**

339.936. Any person or corporation who knowingly violates any provision of
2 **sections 339.900 to 339.936 is guilty of a class B misdemeanor. Any officer or agent of a**
3 **corporation, or member or agent of a partnership or association, who knowingly and**
4 **personally participates in or is an accessory to any violation of sections 339.900 to 339.936**
5 **is guilty of a class B misdemeanor. This section shall not be construed to release any**
6 **person from civil liability or criminal prosecution pursuant to any other law of this state.**
7 **The commission may cause a complaint to be filed for a violation of section 339.903 in any**
8 **court of competent jurisdiction, and perform such other acts as may be necessary to**
9 **enforce the provisions of sections 339.900 to 339.936.**